

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
(ATLANTA DIVISION)**

<b>UNIVERSAL HEALTHCARE AND PROFESSIONAL SERVICES, LLC,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO.</b>
	)	
<b>SUNRISE MEDICAL, INC., STEVE KHAN, and RICHARD MAROTTE,</b>	)	<b>1:18-cv-02273-TWT</b>
	)	
<b>Defendants.</b>	)	

---

**FINAL ORDER AND JUDGMENT**

The above styled case was filed by the Plaintiff on May 18, 2018, seeking recovery of damages from the Defendants for Breach of Contract, Fraud in the Inducement and Fraudulent Misrepresentations. Plaintiff was ordered by this Court to amend the Complaint which was accomplished and filed with the Court on May 21, 2018.

Plaintiff was an approved Medicare supplier of durable medical equipment, orthotics, prosthetics and other supplies to eligible Medicare recipients. In July 2016, Plaintiff entered into a contract with Defendant Sunrise Medical, Inc., to provide marketing services and a call center based upon Sunrise Medical's representations that the corporation and its owners, were experts in dealing with Federal and State law as it related to Medicare.

On or about August 24, 2018, Defendants, by and through counsel, filed an Answer and Counterclaim to Plaintiff's Amended Complaint essentially denying all of the Plaintiff's allegations and claiming that Defendants were entitled to their attorney fees incurred to defend the action.

On November 6, 2018, counsel for Defendants filed a Motion to Withdraw as counsel for

Defendants which was granted by this Court on November 7, 2018. The Order directed the Defendants to file a Substitution of Counsel within 28 days of November 7, 2018.

In spite of this Order, the Defendants failed to provide a substitute counsel as ordered and accordingly, this Court issued a show cause order instructing to Defendants to show cause within 14 days of December 10, 2018, why a default judgment should not be entered against them. Defendants failed to respond in any manner and, on January 9, 2019, the Court issued a default judgment against the Defendants striking the Defendants' Answer and Counterclaim and directing the Plaintiff to submit a Proposed Final Judgment to the Court addressing damages. As such, all allegations of Plaintiff's complaint now stand as admitted by the Defendants.

Plaintiffs have filed the Affidavit of Austin Ganny to the Court with relevant exhibits and this Final Judgment which is attached hereto and is incorporated herein by reference. Based upon the Court's review of the Affidavit of Austin Ganny and the exhibits attached thereto, IT IS HEREBY ORDERED and ADJUDGED as follows:

1. The Court finds that the Plaintiff shall have and recover of the Defendants, for the Breach of Contract, payments made from June 30, 2016 to June 30, 2017 in the total amount of \$ 943,719 .00 and for July 1, 2017 through June 30, 2017 in the total amount of \$ 1,364,436 .00.
2. The Court further finds that for lost net profits, Plaintiff shall have and recover of Defendants, jointly and severally, the total sum of \$ 1,059,203.80 ~~.00~~.
3. The Court awards the following amounts for attorney fees and costs for the Plaintiff and against the Defendants, jointly and severally, \$ 76,925.20 ~~.00~~.

SO ORDERED AND ADJUDGED, this 18th day of April, 2019.

/s/Thomas W. Thrash  
**THOMAS W. THRASH, Jr.**  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
(ATLANTA DIVISION)**

<b>UNIVERSAL HEALTHCARE AND</b>	)	
<b>PROFESSIONAL SERVICES, LLC,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION NO.</b>
<b>v.</b>	)	
	)	
<b>SUNRISE MEDICAL, INC., STEVE</b>	)	<b>1:18-cv-02273-TWT</b>
<b>KHAN, and RICHARD MAROTTE,</b>	)	
	)	
<b>Defendants.</b>	)	

---

**AFFIDAVIT OF AUSTIN GANNY**

**STATE OF GEORGIA  
COUNTY OF FULTON**

Personally appeared before the undersigned, an officer who is authorized by law to administer oaths, AUSTIN GANNY, who being duly sworn testified as follows:

1.

My name is AUSTIN GANNY. I am a resident of Douglasville, Georgia. I am over the age of 18 years and am competent to give this Affidavit. I authorize the use of this Affidavit for all legal purposes. This Affidavit is based upon personal first-hand knowledge.

2.

I am now and have been at all times relevant hereto, the Chief Executive Officer and Managing Member of Universal Healthcare and Professional Services, LLC ("UHC"), the Plaintiff in above styled action against Sunrise Medical, Inc., Steve Kahn and Richard Marotte

(collectively referred to herein as “Defendants”). I am the custodian of the business records of UHC.

3.

Since 2010, UHC has been a Medicare-certified supplier that provides durable medical equipment, orthotics or prosthetics and supplies to eligible Medicare recipients and other patients.

4.

On July 13, 2016, Plaintiff UHC and Defendants, who represented themselves to be experts in State and Federal law regarding marketing the types of medical equipment being sold by UHC, entered into an agreements wherein Defendants were to provide Call Center Services and marketing in accordance with the applicable Federal and State law dictates, to include without limitation, 42 C.F.R. § 424.57(c)(11).

5.

In reliance on the representations of Defendants that they were fully knowledgeable of Federal and State law as it applied to marketing to Medicare recipients and that they would ensure compliance with all applicable legal requirements, Plaintiff entered into agreements for the services with Defendants.<sup>1</sup>

6.

In spite of Defendants’ representations, Defendants failed to comply with the applicable Federal and State Laws, and as such Plaintiff UHC was suspended by Medicare and lost the ability to market medical equipment to Medicare recipients thereby resulting in lost revenues and

---

1. Per that Court’s previous Order, the Answer and Counterclaim of the Defendants was stricken and accordingly all allegations contained in paragraphs 16 through 60 of Plaintiff’s complaint are admitted in their entirety.

profits for 2018 and thereafter. Plaintiff filed this action on May 18, 2018 against Defendants for Breach of Contract, Fraudulent Inducement and Fraudulent Misrepresentation and filed an Amended Complaint based upon the Court's Opinion and Order date May 21, 2018.

7.

Defendants filed an Answer and Counterclaim to the Amended Complaint on or about August 24, 2018, by and through counsel. On September 28, 2108, the Plaintiff filed an Answer to the Counterclaim of Defendants. On November 6, 2018, counsel for Defendants filed a Motion to Withdraw as counsel for Defendants which was granted by the Court on November 7, 2018 directing the Defendants that they must file a Substitution of Counsel with the Court within 28 days of November 7, 2018.

8.

Defendants failed to provide substitute counsel as ordered by the Court and on December 10, 2018, the Court issued an Order directing Defendants to show cause within 14 days why a default judgment should not be entered against them. On January 9, 2018, the Court issued an Order granting a default judgment, striking the Answer and Counterclaim of the Defendants and directing UHC to submit a proposed Final Judgment Order for the Court's determination.

9.

Copies of the UHC financial statements for 2017 and 2018 are attached hereto as Exhibits "A" and "B", respectively and are incorporated herein by reference. The attached records are kept in the ordinary course of the business of UHC and are true and accurate copies of same.

10.

After extensive review of the business records of UHC as it relates to the business dealings between all Defendants Sunrise Medical, Inc, Steve Kahn and Richard Marotte and review of all accounting records of UHC, I have determined that UHC incurred damages relating to the breach of the contract, fraudulent inducement to enter into the contract and the fraudulent misrepresentations by Defendants.

11.

Due to the failure of the Defendants to perform the agreed upon services and/or to comply with the applicable Federal and State Medicare law, Plaintiff was paid the following amounts for services that were not provided:

- (a) Payments made to Defendants from June 30, 2016 through June 30, 2017 in the total amount of \$943,719.00; and
- (b) Payments made to Defendants from July 1, 2017 through June 30, 2018 in the total amount of \$1,364,436.00.

12.

Defendants failure to follow Federal and State law Medicare, resulted in UHC losing Medicare certification and the ability to market its products to Medicare recipients. Comparing the severe change in net profits from 2017 to 2018, the actions of Defendants caused UHC to incur lost net profits through December 31, 2018 in the total amount \$1,059,203.80. See Exhibits "A" and "B" attached hereto.

13.

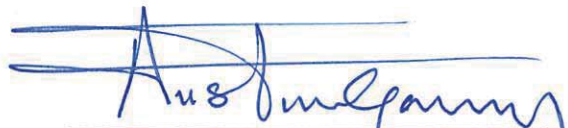
Defendants actions as described above, resulted in UHC losing our ability to market medical products to Medicare recipients and incurring the following attorney fees and costs as shown:

Brawn & Fortunato, P.C., Medicare Attorneys	\$52,534.80
Lewis, Brisbois, Bisgaard & Smith, LP	8,690.40
Jacobs & King, LLC	<u>15,000.00</u>
Sub Total Atty Fees	\$76,225.20
Costs (Filing and Service Fees)	<u>700.00</u>
Total Attorney Fees & Costs	\$76,925.20

14.

The total amount of all damages as a result of the actions of the Defendants are therefore, \$3,444,284.00.

**FURTHER AFFIANT SAYETH NOT.**

  
 AUSTIN GANNY, Managing Member  
 Universal Healthcare and Professional  
 Services, Inc.

Sworn to and subscribed before me  
 this 12<sup>th</sup> day of April, 2019.

  
 NOTARY PUBLIC

(Seal)





## UNIVERSAL HEALTHCARE AND PROFESSIONAL SERVICES

Jan - Dec 17

Ordinary Income/Expense	
Income	
Interest Income	110.43
Refunds	360.00
SERVICE/SALES INCOME	6,302,806.58
Total Income	<u>6,303,277.01</u>
Cost of Goods Sold	
Contractors	11,934.51
Purchases	5,374,234.62
Total COGS	<u>5,386,169.13</u>
Gross Profit	917,107.88
Expense	
ACCOUNTING SERVICES	2,291.66
Advertising and Promotion	1,231.37
Automobile Expense	5,335.56
Bank Service Charges	37,392.45
Computer and Internet Expenses	2,589.65
Dues and Subscriptions	9,406.69
Education	13,656.82
Insurance Expense	12,396.42
Lease Payments	2,481.91
Legal & Professional Fees	15,449.50
Marketing / Commission	4,697.16
Meals and Entertainment	2,732.03
MEDICAL EXPENSE	2,068.93
MISC	3,949.29
Office Supplies	6,637.98
Payroll Expenses	
Payroll Service Fees	2,071.20
Payroll Taxes	50,358.68
Payroll Wages	155,103.94
Payroll Expenses - Other	14,223.41
Total Payroll Expenses	221,757.23
Pest Control Service	1,003.85
POSTAGE & SHIPPING	9,885.98
Repairs and Maintenance	655.94
Security	1,911.77
TAX EXPENSE	9,946.20
Telephone Expense	3,061.08
Travel Expense	5,352.83
TUITION EXPENSE	893.50
Utilities	6,381.87
Total Expense	<u>383,167.67</u>
Net Ordinary Income	<u>533,940.21</u>



## UNIVERSAL HEALTHCARE AND PROFESSIONAL SERVICES

Jan - Dec 18

Ordinary Income/Expense  
Income

SERVICE/SALES INCOME	361,474.72	
Total Income	361,474.72	
Cost of Goods Sold		
Contractors	5,350.24	
Purchases	498,220.57	
Total COGS	503,570.81	
Gross Profit	<u>(142,096.09)</u>	
Expense		
Advertising and Promotion	383.87	
Automobile Expense	9,437.73	
Bank Service Charges	1,197.09	
Computer and Internet Expenses	1,341.86	
Continuing Education	46.00	
Donations	258.05	
Dues and Subscriptions	250.00	
Education	2,358.96	
Insurance Expense	30,329.44	
Lease Payments	8,929.04	
Legal & Professional Fees	17,222.84	
Marketing / Commission	3,630.61	
Meals and Entertainment	176.89	
MEDICAL EXPENSE	546.42	
MISC	6,281.60	
Office Supplies	3,167.14	
Payroll Expenses		
Payroll Service Fees	10,298.62	
Payroll Taxes	68,192.92	
Payroll Wages	183,535.54	
Payroll Expenses - Other	5,285.75	
Total Payroll Expenses	267,312.83	
Pest Control Service	1,204.20	
POSTAGE & SHIPPING	5,141.88	
Repairs and Maintenance	149.02	
Security	1,342.16	
Telephone Expense	726.09	
Travel Expense	369.17	
Utilities	8,707.87	
Total Expense	<u>370,510.76</u>	
Net Ordinary Income	<u>(512,606.85)</u>	



**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
(ATLANTA DIVISION)**

<b>UNIVERSAL HEALTHCARE AND PROFESSIONAL SERVICES, LLC,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO.</b>
	)	
<b>SUNRISE MEDICAL, INC., STEVE KHAN, and RICHARD MAROTTE,</b>	)	<b>1:18-cv-02273-TWT</b>
	)	
<b>Defendants.</b>	)	

---

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the within and foregoing Proposed Final Order and Judgment upon all parties by electronic delivery and by depositing a copy of same in the United States mail, with adequate postage attached thereto, addressed as follows:

Richard Marotte  
4701 N. Federal Hwy, Suite 485  
Pompano Beach, FL 33064  
[Rmarotte1975@gmail.com](mailto:Rmarotte1975@gmail.com)

Steve Kahn  
4701 N. Federal Hwy, Suite 485  
Pompano Beach, FL 33064  
[stk967@aol.com](mailto:stk967@aol.com)

Sunrise Medical Inc.  
c/o Richard Marotte  
4701 N. Federal Hwy, Suite 485  
Pompano Beach, FL 33064

Respectfully submitted this 15<sup>th</sup> day of April, 2019.

/s/ Cary S. King  
Cary S. King  
Georgia Bar No. 419810  
Scott R. King  
Georgia Bar No. 421345  
*Attorneys for Plaintiff*

JACOBS & KING, LLC  
1117 Perimeter Center West, Suite W501  
Atlanta, Georgia 30338  
Phone: (404) 920-4490  
Fax: (404) 920-8670

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the within and foregoing document was prepared in Times  
New Roman 14 point font in accordance with Local Rule 5.1(b).

/s/ Cary S. King  
Cary S. King  
Georgia Bar No. 419810  
Scott R. King  
Georgia Bar No. 421345  
*Attorneys for Plaintiff*

JACOBS & KING, LLC  
1117 Perimeter Center West, Suite W501  
Atlanta, Georgia 30338  
Phone: (404) 920-4490  
Fax: (404) 920-8670